



Unclaimed IOLTA Funds

Periodically, lawyers find they have unclaimed client funds in a trust account. This can occur when clients disappear or checks remain uncashed. Common situations include:

- A client may deposit a retainer with the lawyer and then never return to the office. When the lawyer tries to make contact, the client cannot be located.
- Witnesses or others may fail to cash small checks received for appearance fees or other services.
- A settlement check may be received that is payable to both the lawyer and the client, but the lawyer cannot find the client.

If unclaimed funds remain in the trust account, the lawyer must comply with ORS 98.302-98.436 (Disposition of Unclaimed Property Act). This statute sets out the procedures for reporting unclaimed funds to the Department of State Lands. In no circumstance may the lawyer take these unclaimed funds for his or her own purposes. OSB Legal Ethics Op No 2005-48.

When a check paid out of client funds is not cashed by the recipient, those funds revert to the client and should be reimbursed to the client. If you can't find the client after holding the sum for two years, you must report it to the Department of State Lands and deliver the funds to the Oregon State Bar. (SB 687 effective January 1, 2010.) You must take reasonable steps to find the client and must maintain reasonable records sufficient to permit the client to make a claim for the return of the property for the period permitted by the Act. One way to avoid this problem is to carefully monitor canceled checks. If a check has not cleared the trust account for two months, track it down immediately. Another solution may be to print "void after 90 days" on the face of the check.

If a settlement check is made payable to both the lawyer and the client, the lawyer cannot sign the client's name on the endorsement without the client's authorization. *In re Maroney*, 324 Or 457 (1996) (lawyer disbarred, in part, for signing settlement check without client's

knowledge or consent). If the lawyer has a signed fee agreement from the client authorizing the lawyer to take a certain percentage of the settlement for fees, plus costs advanced, the lawyer may return the check to the issuer and request that two checks be issued – one for the lawyer’s fees and costs and one made payable to the client only. The lawyer must still comply with OSB Legal Ethics Op No 2005-48 and ORS 98.302-98.436 with respect to the client’s portion of the settlement. *See also* OAR 141-045-0031 (3)(d). Instruct your clients to notify you if their address or phone number changes. If a client will be unavailable during critical periods of time, discuss whether the client should give you a power of attorney to negotiate, settle, and sign documents on the client’s behalf.

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